

MICHAEL S. AMATO
RUSKIN MOSCOU FALTISCHEK, P.C.
East Tower, 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425
(516) 663-6600

Attorneys for Colonial Properties, LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re

Chapter 11

SEARS HOLDINGS CORPORATION, et al.¹,

Case No. 18-23538 (rdd)

Debtors.

(Jointly Administered)

-----X

**DECLARATION OF LAWRENCE KADISH IN SUPPORT OF MOTION OF
COLONIAL PROPERTIES, LLC TO COMPEL PAYMENT OF POST-PETITION
DATE RENT AND RELATED LEASE OBLIGATIONS PURSUANT TO
11 U.S.C. §§ 105(a), 363(e), 365(d)(3) AND 503(b)(1)(A)**

Lawrence Kadish, pursuant to 28 U.S.C. § 1746, declares under the penalty of perjury:

1. I am the President of Colonial Properties, LLC (“Landlord”) in the above-entitled

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); SHC Licensed Business LLC (3718); and SHC Promotions LLC (9626). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

matter.

PRELIMINARY STATEMENT

2. Colonial is the landlord of property that is subject to a lease dated December 1, 1983, as amended and extended from time to time (the “Lease”) for certain non-residential real property located at 118 Waller Mill Road, Williamsburg, VA 23185 (the “Premises”). The Debtors have failed to pay the full rent due under the Lease for the month of February, 2019. The Debtors are required to pay all other charges under the Lease including, but not limited to, real estate taxes, deferred maintenance and water charges. In addition, pursuant to the Lease the Debtors are responsible for all out-of-pocket counsel fees and expenses of landlord. Further, the Debtors subleased portions of the Premises. Landlord is entitled to immediate payment of all amounts collected by the Debtors from the subtenants subsequent to the rejection of the Premises. The Landlord seeks immediate payment of the unpaid post-Petition Date rent, additional rent and rent collected by the Debtors from the subtenants pursuant to §§ 363(e) and 365(d)(3) of the Bankruptcy Code.

3. The Debtors lease from the Landlord the entire Premises located at 118 Waller Mill Road, Williamsburg, VA 23185. A true and complete copy of the Lease is annexed hereto as Exhibit A. The Lease requires the Debtors to pay monthly, among other charges, Base Rent for the use and occupancy of the Premises. Current annual Base Rent for the Premises is \$562,500. (Lease, Exhibit A, ¶ 6(iii)).

4. Subsequent to the Petition Date, the Debtors made one (1) payment to the Landlord in the amount of \$93,750 for the months of December 2018 and January 2019. A true and complete copy of check number 34000560, dated December 1, 2018, in the amount of \$93,750 is annexed hereto as Exhibit B. The Base Rent for the month of February 2019 in the

amount of \$46,875 remains unpaid.

5. In addition to the rent, the Debtors are obligated to pay:

- (i) Late payments for any installment of basic rent not paid within five (5) days after its due date in the amount of one (1%) percent per annum (Exhibit A, ¶ 6(c);
- (ii) All taxes and assessments (Exhibit A, ¶ 8);
- (iii) Attorneys' fees and expenses for any and all expenses arising from any failure by the Debtors to perform any of the agreements, terms, covenants and conditions of the lease (Exhibit A, ¶ 10).

6. Also, the Debtors occupy the entire shopping center at the Premises. Upon information and belief, the Debtors sublet portions of the Premises to eight (8) subtenants. As of the date of this Motion, Landlord has been unable to obtain any information relating to security deposits, as well as rent paid by the subtenants to the Debtors for the period subsequent to February 26, 2019, the effective date of the rejection of the Lease. Based upon the foregoing, Landlord is entitled to payment of any and all rents and additional rents paid by the subtenants to the Debtors for the period subsequent to February 26, 2019, together with any and all security deposits maintained by the Debtors for those Premises. A true and complete copy of a schedule of subleases entered into by the Debtors at the Premises is annexed hereto as Exhibit C.

WHEREFORE, the Landlord respectfully requests that the Court enter an order (i) compelling Debtors' immediate payment of post-Petition Date rent under the Lease in the amount of \$46,875; (ii) all accrued and unpaid state and local taxes and charges; (iii) all payments made to the Debtors by Subtenants subsequent to February 26, 2019; and (iv) late fees, interest, attorneys' fees and expenses incurred in connection with this Motion, pursuant to 11

U.S.C. §§ 105(a), 363(e), 365(d)(3) and 503(b)(1)(A); and (ii) granting such other and further relief as the Court deems just and proper.

Dated: Uniondale, New York
April 11, 2019

/s/ Lawrence Kadish
LAWRENCE KADISH